

**REMARKS/ARGUMENTS**

The present application has been reviewed in light of the non-Final Office Action mailed January 19, 2010. Claims 100 and 103-109 are currently pending, claims 1-99, 101 and 110 having being cancelled, and claims 100, 104, 107 and 109 having been amended herein. Reconsideration of the present application is respectfully requested. Applicant reserves the right to file one or more Continuation and/or Divisional Applications as appropriate. No new matter has been added by the present amendment.

Claims 100, 102-104 and 106-110 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,609,285 to Grant et al. in view of U.S. Patent No. 5,855,312 to Toledano. Applicant respectfully submits, however, that the Grant in view of Toledano fails to disclose each and every element recited in independent claims 100 and 109 as presented herein.

As the BPAI reiterated in In re Wada and Murphy, an obviousness rejection under § 103 requires a suggestion of *all limitations in a claim*. Appeal 2007-3733 (B.P.A.I. Jan. 2008) (citing In re Royka, 490 F.2d 981, 985 (CCPA 1974); emphasis added). If the references, alone or in combination, do not teach or suggest each and every element of the claim, then the references cannot support a rejection under § 103. See Id.

Independent claims 100 and 109 have been amended herein to recite a surgical device including, *inter alia*, a housing having an inner surface, an annular rim extending radially inwardly from the inner surface into the bore; an anvil including an anvil sleeve extending proximally from the anvil and a trocar receiving slot configured to receive the trocar, the anvil sleeve having a circumferential recess channel formed in an outer surface thereof and extending radially therearound, such that, when the anvil sleeve is disposed in the bore, the circumferential recess is

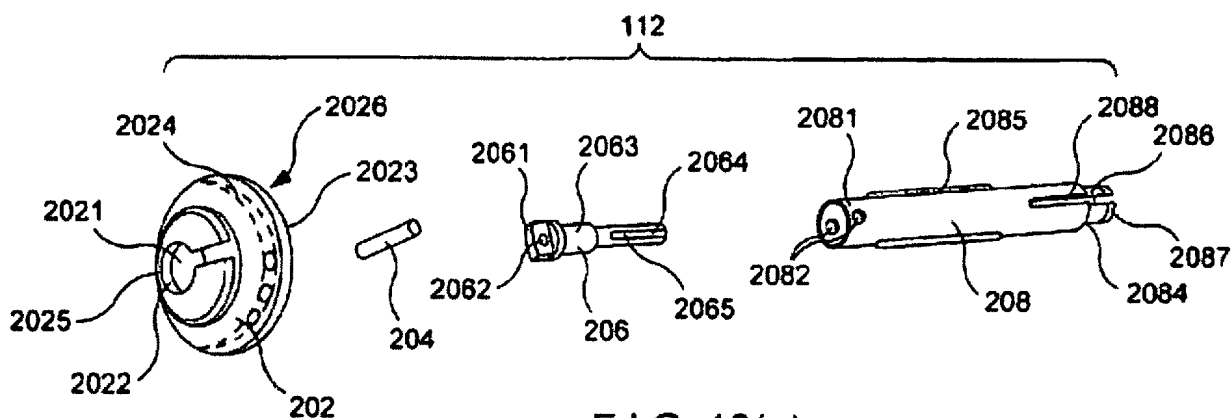
configured to receive the rim to releasably axially secure the anvil sleeve in the bore and to axially lock the anvil in a predetermined position relative to the housing.

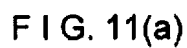
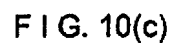
According to the present disclosure and as seen in FIGS. 10(a), 10(c) and 11(a):

At a distal end 2522 of the central rear endcap sleeve 252, the bore 2521 defines a radially inwardly-extending rim 2523. (see Para. [0111]).

In a proximal end 2084 of the anvil sleeve 208 there is defined a recess 2086 that extends circumferentially around the anvil sleeve 208 and that has a radius that is smaller than the radius of the other portions of the anvil sleeve 208, including the radius of several radially-extending teeth 2087 located at the proximal-most end of the anvil sleeve 208. (see Para. [0098]).

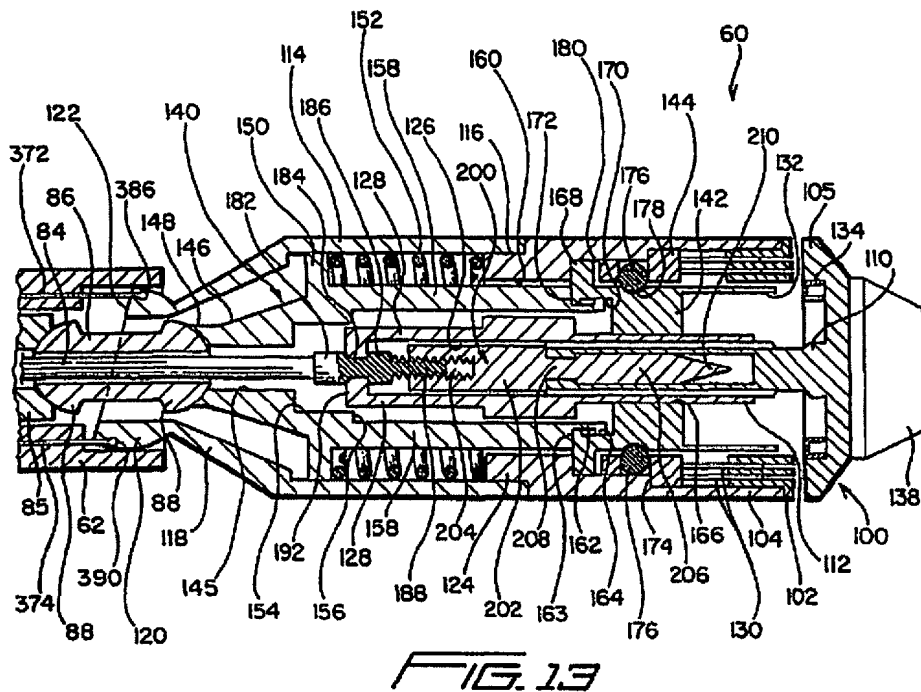
In the position shown, the rim 2523 of the central rear endcap sleeve 252 is engaged within the recess 2086 of the anvil sleeve 208, thereby axially fixing the central rear endcap sleeve 252 and the anvil sleeve 208 relative to each other. (see Para. [0114]).





Applicant submits that the circumferential recess channel 2086 of anvil sleeve 208 and the annular rim 2523 of sleeve 252 cooperate with one another to maintain an axial position of the anvil relative to the housing.

In contrast, Applicant submits that Grant, as seen in FIGS. 13, relates to a surgical anastomosis stapling instrument including a casing or housing 104 that apparently defines an annular rim as illustrated by a rear cylindrical wall 124. Applicant submits that the rear cylindrical wall 124 of housing 104 fails to enter into or be disposed in any circumferential recess channel of any component thereof which functions to maintain the axial position of the anvil relative to the housing. In fact, a proximal surface of rear cylindrical wall 124 contacts a spring 152, interposed between a main driver 140 and housing 104, and therefore would suggest that the main driver 140 is axially movable with respect housing 104.



The examiner relies on Toledano for the disclosure of a flexible shaft. Applicant submits, that even assuming the disclosure of Toledano proffered by the Examiner is accurate, that Toledano fails to cure the deficiencies of Grant in that Toledano fails to teach or suggest each and every element of each of independent claims 100 and 109, in that Toledano fails to teach or suggest a housing having an inner surface, an annular rim extending radially inwardly from the inner surface into the bore; an anvil including an anvil sleeve extending proximally from the anvil and a trocar receiving slot configured to receive the trocar, the anvil sleeve having a circumferential recess channel formed in an outer surface thereof and extending radially therearound, such that, when the anvil sleeve is disposed in the bore, the circumferential recess is configured to receive the rim to releasably axially secure the anvil sleeve in the bore and to axially lock the anvil in a predetermined position relative to the housing, as called for in each of independent claims 100 and 109.

Accordingly, in view of the foregoing amendments and remarks, Applicant respectfully submits that Grant in view of Toledano fails to suggest or render obvious either of independent claims 100 or 109. For at least these reasons, Applicant submits that the subject matter of each of independent claims 100 and 109, as a whole, is patentable under 35 U.S.C. 35 U.S.C. §103(a) over Grant in view of Toledano. Furthermore, since claims 102-104 and 106-108 depend from independent claim 100, and contain all of the limitations thereof, Applicant respectfully submits that the subject matter of claims 102-104 and 106-108, as a whole, is patentable for at least the reasons that independent claim 100 is patentable.

Claim 105 stands rejected under 35 U.S.C. 35 U.S.C. §103(a) as being unpatentable over Grant in view of Toledano as applied to claim 108 above, and further in view of U.S. Patent No.

6,491,201 to Whitman. Applicant respectfully submits, however, that Grant in view of Toledano and further in view of Whitman fails to disclose each and every element recited in claim 105 as presented herein.

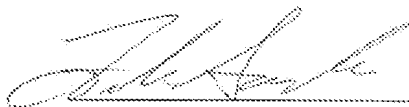
The Examiner relies on Whitman for the disclosure of a surgical instrument having a flexible shaft movable relative to a housing by way of a rotatable driver selectively rotated by at least one motor via a controller. However, even assuming the teachings of Whitman proffered by the Examiner are correct, Applicant submits that Whitman would fail to cure any deficiencies of Grant and/or Toledano because Whitman fails to teach or suggest “a housing having an inner surface, an annular rim extending radially inwardly from the inner surface into the bore; an anvil including an anvil sleeve extending proximally from the anvil and a trocar receiving slot configured to receive the trocar, the anvil sleeve having a circumferential recess channel formed in an outer surface thereof and extending radially therearound, such that, when the anvil sleeve is disposed in the bore, the circumferential recess is configured to receive the rim to releasably axially secure the anvil sleeve in the bore and to axially lock the anvil in a predetermined position relative to the housing,” as recited in independent claim 100.

In view of the foregoing, for at least the reasons that amended independent claim 100 is allowable over Grant in view of Toledano and further in view of Whitman under 35 U.S.C. §103(a), *inter alia*, Applicant respectfully submits that claim 105 is also allowable under 35 U.S.C. §103(a) over Grant in view of Toledano and further in view of Whitman.

Should the Examiner believe that a telephone interview may facilitate prosecution of this application, or resolve any outstanding matters, the Examiner is sincerely invited to contact the Applicant's undersigned representative at the number indicated below.

In view of the foregoing amendments and remarks, reconsideration of the application and allowance of claims 100 and 102-109 is earnestly solicited.

Respectfully submitted,



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